



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2013-0060; FRL-9903-98-Region 6]

Approval and Promulgation of Implementation Plans; New Mexico; Prevention of Significant Deterioration; Greenhouse Gas Plantwide Applicability Limit Permitting Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving portions of one revision to the New Mexico State Implementation Plan (SIP) submitted by the New Mexico Environment Department (NMED) to EPA on January 8, 2013. The January 8, 2013, submittal adopted revisions to the New Mexico Prevention of Significant Deterioration (PSD) plantwide applicability limit (PAL) permitting provisions to enable the NMED to issue PALs to greenhouse gas (GHG) emitting sources. EPA is approving the January 8, 2013, SIP revision to the New Mexico PSD permitting program as consistent with federal requirements for PSD permitting. EPA is taking no action on the portion of the January 8, 2013, SIP revision that relates to the provisions of EPA's July 20, 2011, GHG Biomass Deferral Rule. EPA is taking this final action under section 110 and part C of the Clean Air Act (CAA or the Act). EPA is not approving these rules within the exterior boundaries of a reservation or other areas within any Tribal Nation's jurisdiction.

DATES: This final rule will be effective [insert date 30 days after publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2013-0060. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R). Please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, Air Permits Section (6PD-R), telephone 214-665-2115; e-mail address wiley.adina@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background for this Final Action

On August 23, 2013, EPA proposed approval of the January 13, 2013, submitted

revisions to 20.2.74 NMAC into the New Mexico SIP. See 78 FR 52473. Our proposed rulemaking provided our preliminary determination that the January 13, 2013, revisions to the New Mexico PSD permitting program are substantively similar to the federal requirements for the permitting of GHG-emitting sources subject to PSD. Our proposal demonstrated that the submitted revisions to 20.2.74.7(AZ)(1) and 20.2.74.320 NMAC appropriately revised the New Mexico PSD PAL permitting requirements to provide the NMED the authority to issue GHG PALs, consistent with EPA's Tailoring Rule Step 3 for GHG PALs. Our analysis also demonstrated that non-substantive revisions adopted at 20.2.74.7(AZ)(1), (2), (2)(b), (3), (4), and (5) NMAC to correct typographical errors are also approvable as revisions to the New Mexico SIP.

We accepted comments on this proposed rulemaking through September 23, 2013. No comments were received. Therefore, EPA is finalizing the rule as proposed.

II. Final Action

EPA is approving portions of the January 8, 2013, submitted revisions to 20.2.74 NMAC into the New Mexico SIP which provide the NMED the authority to issue GHG PALs in the New Mexico PSD program. EPA has determined that the January 8, 2013, revisions to 20.2.74 NMAC are approvable because they were adopted and submitted in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs. Therefore, under section 110 and part C of the Act, and for the reasons stated in our proposed rulemaking, EPA approves the following revisions to the New Mexico SIP:

- Substantive revisions to 20.2.74.7(AZ)(1) NMAC establishing GHG PAL permitting requirements,

- Non-substantive revisions to 20.2.74.7(AZ)(1), (2), (2)(b), (3), (4), and (5) NMAC to correct formatting, and
- Substantive revisions to 20.2.74.320 NMAC establishing the GHG PAL permitting requirements.

EPA is taking no action at this time on the submitted revisions to 20.2.74.7(AZ)(2)(a) NMAC. The D.C. Circuit Court issued an order to vacate EPA's Biomass Deferral Rule on July 12, 2013.

EPA is not approving these rules within the exterior boundaries of a reservation or other areas within any Tribal Nation's jurisdiction.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA

will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 25, 2013.

Ron Curry,
Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52 -APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG – New Mexico

2. Section 52.1620(c) is amended by revising the entry for Part 74 under the first table titled “EPA Approved New Mexico Regulations” to read as follows:

§ 52.1620 Identification of plan

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(c) * * *

EPA APPROVED NEW MEXICO REGULATIONS

State Citation	Title/Subject	State approval/effective date	EPA approval date	Comments
New Mexico Administrative Code (NMAC) Title 20 – Environment Protection Chapter 2 – Air Quality				
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Part 74	Permits – Prevention of Significant Deterioration	1/8/2013	[Insert date of FR publication] [Insert FR page number where document begins]	Revisions to 20.2.74.303(A) NMAC submitted 5/23/2011, effective 6/3/2011, are NOT part of SIP. 20.2.74.303 NMAC submitted 12/1/2010, effective 1/1/2011, remains SIP approved (6/20/2011, 76 FR 43149). Revisions to 20.2.74.7(AZ)(2)(a) NMAC submitted 1/8/2013, effective 2/6/2013, are NOT part of SIP. 20.2.74.7(AZ)(2)(a) NMAC submitted 5/23/2011, effective 6/3/2011, remains SIP approved.
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